

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

IN RE: MCCLAIN FEED YARD, INC., MCCLAIN FARMS, INC., AND 7M CATTLE FEEDERS, INC., Debtors. ¹	Chapter 7 CASE NO. 23-20084-rlj Jointly Administered
RABO AGRIFINANCE LLC, <i>Plaintiff,</i> v. ACEY LIVESTOCK, LLC et al., <i>Defendants.</i> ²	ADV. PROC. NO. 23-02005 Honorable Robert L. Jones

¹ The Debtors in these chapter 7 cases are: McClain Feed Yard, Inc. (Case No. 23-20084-RLJ), McClain Farms, Inc. (Case No. 23-20085-RLJ), and 7M Cattle Feeders, Inc. (Case No. 23-20086-RLJ).

² The Defendants named in the Complaint are: ACEY LIVESTOCK, LLC; MICHAEL ACEY; STAN E. AYERS, JR.; ARNOLD BRAUN TRUST; ARNOLD BRAUN; ROBERT BRAUN; BAR D RANCH LAND & CATTLE LLC; N. TERRY DICKS; BARRETT'S LIVESTOCK INC.; DON RALPH BARRETT; BELLA ELEGANCE LLC; BIG SEVEN CAPITAL PARTNERS, LLC; DORA BLACKMAN; BRYAN BLACKMAN; EDDIE BRYANT; BRENT BURNETT; JOE BURNETT; TERRY BURNETT; BUSS FAMILY TRUST; EDWIN D. BUSS; DENNIS BUSS; C HEART RANCH, LLC; COLETTE LESH; CARRAWAY CATTLE, LLC; RICHARD CARRAWAY; CURTIS JONES FARMS; DAC83 LLC; ERIC DEJARNETT; DON JONES FARM, INC.; DON JONES TRUCKING, INC.; DUFURRENA CUTTING HORSES; EDWARD LEWIS DUFURRENA; RIETA MAY DUFURRENA; ROBERT ELLIS; MICHAEL EVANS; DOUG FINLEY; GARWOOD CATTLE CO.; JUSTIN GARWOOD; GENE BROOKSHIRE FAMILY, LP; JOEL BROOKSHIRE; GRAY BROTHERS CATTLE; ROBERT GRAY; RONNIE GRAY; JIMMY GREER; GUNGOLL CATTLE, LLC; BRADLEY GUNGOLL; LEAH GUNGOLL; JACE HARROLD; HINES CATTLE COMPANY, LLC; HINES FARMS, LLC; A.J. JACQUES LIVING TRUST; CORY JESKO; DWIGHT JESKO; JOANN & KEITH BROOKS d/b/a BROOKS FARMS; LARRY KEITH; DUSTIN JOHNSON; DAVID JOHNSON; KINSEY JONES; KINGDOM TRUST; JAMES MCCUAN; KEITH HARRIS; JANICE LAWHON; JAN LESH; MORRISON CAFÉ, LLC; LESH FAMILY TRUST; GARY LESH; JARED LESH; JORDAN LESH, LLC; LFC CATTLE; CHARLES LOCKWOOD; COLE LOCKWOOD; SHERLE LOCKWOOD; NIKKI LOCKWOOD; MAP ENTERPRISES; MIKE GOURLEY; NATALIE MARTUS; JEAN NIX; OPEN A ARENA LLC; BARRY PHILLIPS; DREW PHILLIPS; PRIEST CATTLE COMPANY LTD; PRIEST VICTORY INVESTMENT LLC; CHRISTOPHER PRINCE; PRODUCERS LIVESTOCK COMMISSION; SONNY BARTHOLD; DAVID RAINEY; RAPP RANCH; MARK J. REISZ; RALPH REISZ; RIDGEFIELD CAPITAL ASSET MANAGEMENT; JIM GIORDANA; RILEY LIVESTOCK, INC.; ANGIE ROBINSON; RICK RODGERS; STEVE RYAN; JIM RININGER; SCARLET & BLACK CATTLE, LLC; COLTON LONG; SCOTT LIVESTOCK COMPANY; SHAW & SHAW FARMS PARTNERSHIP LLC; THE UNIVERSITY OF FLORIDA; ROBERT J. SPRING; STARNES CATTLE; JEFF STARNES; EDDIE STEWART; ROBERT STEWART; RACHEL STEWART; SCOTT E. STEWARD; STEVE T SCOTT FARMS, INC.; JUSTIN

**JOINT MOTION FOR STATUS CONFERENCE AND FOR ENTRY OF
ALTERNATIVE SCHEDULING ORDER**

Pursuant to Federal Rules of Bankruptcy Procedure 7016 and 7026, Plaintiff Rabo Agrifinance LLC's ("Plaintiff" or "RAF") and Defendant Kent Ries, Chapter 7 Trustee (the "Trustee"), through their respective counsels, hereby jointly move the Court for a status conference in this adversary proceeding, the purpose of which would be to discuss the entry of the proposed Alternative Scheduling Order attached hereto or such other Alternative Scheduling Order as the Court may deem appropriate after considering the views of RAF, the Trustee, and all remaining Defendants who desire to be heard on the matter.

In support of this Joint Motion, RAF and the Trustee state as follows:

SUMMARY

One important issue in the Debtors' bankruptcy cases is the application of the USDA Dealer Trust statute (the "Act"), including: (i) whether the Act applies in this case given that it was enacted after the issuance of certain loan documents by RAF and after RAF received liens on the Debtors' property, (ii) if the Act applies, which claims qualify as USDA Dealer Trust claims; and (iii) what property is subject to the Dealer Trust, including certain funds on hand with the Trustee at the inception of the bankruptcy cases. This lawsuit was filed by RAF against each of the asserted USDA Trust Act claimants and the Trustee to address these issues.

At the same time, the Trustee has two years from the filing of the Debtors' bankruptcy cases to file lawsuits generally. *See* 11 U.S.C § 108(a). The Trustee likewise has two years from

STUEVER; PHILLIP SULLIVAN; AMY SUTTON, CRAIG SUTTON, TGF RANCH LLC; TOM FRITH; THORLAKSON DIAMOND T FEEDERS, L.P.; JOHN TIDWELL; MYKEL TIDWELL; TINDAL TRUCK SALES; JOHN TINDAL; JANET VANBUSKIRK; LYNDAL VANBURKIRK; SUSAN VANBUSKIRK; COLBY VANBUSKIRK; CAMERON WEDDINGTON; NANCY WEDDINGTON; WILLIAM WEDDINGTON; WILDFOREST CATTLE COMPANY LLC; WILEY ROBY RUSSELL, JR., as TRUSTEE OF THE W. ROBBIE RUSSELL LIVING TRUST; WJ PERFORMANCE HORSES, INC.; JOB WHITE; and KENT RIES, in his capacity as CHAPTER 7 TRUSTEE OF THE DEBTORS' CONSOLIDATED BANKRUPTCY ESTATE.

the filing of the bankruptcy to file any avoidance claims. 11 U.S.C. § 546(a). The Trustee's investigation is ongoing and the Trustee is generally opposed to any proceeding that could limit his time to investigate and file litigation claims.

RAF and the Trustee both recognize that the instant lawsuit may trigger concerns regarding the requirement to assert various other compulsory claims, including possibly claims that the Trustee still has more than a year to assert. The parties have conferred and agreed to request the Court to approve a procedure to allow this lawsuit to continue initially for certain limited purposes, but to abate any portions of the lawsuit pending additional time for the investigation and lodging of more claims. The purpose of this Motion is to request a status conference to discuss and implement an appropriate Scheduling Order to achieve this result.

BACKGROUND

1. RAF filed its First Amended Complaint (the "Amended Complaint") on November 30, 2023.
2. In general, the Amended Complaint asserts declaratory relief claims only against the Trustee and the other named Defendants regarding the various rights, duties and obligations of the parties concerning certain cattle and proceeds of cattle, including claims regarding RAF's rights as a secured creditor of the McClain Debtors, and the Defendants' rights, if any, under 7 U.S.C. § 217(b).
3. All Defendants other than the Trustee are persons or entities who asserted "Dealer Trust" claims against one or more of the McClain Debtors under the foregoing statute.
4. There are well over 100 named Defendants in this action.

5. On December 1, 2023, the day after the Amended Complaint was filed, the Court issued its *Order Regarding Adversary Proceeding Trial Setting and Alternative Scheduling Order* (the “Current Scheduling Order”) in this case. See Dkt. 6.

6. Most of the Defendants who have filed an answer to the First Amended Complaint requested one or more extensions of their deadline to do so, which requests RAF granted.

7. RAF and the Trustee understand the following parties filed the following answers on the following dates:

Answering Defendants	Answer Filed
Acey Livestock, LLC and Michael Acey	December 28, 2023 [Dkt. 92]
Barret’s Livestock, Inc. and Don Ralph Berrett	December 28, 2023 [Dkt. 93]
Dwight Jesko and Cory Jesko	January 4, 2024 [Dkt. 114]
Angie Robinson	January 5, 2024 [Dkt. 115]
Riley Livestock, LLC	February 22, 2024 [Dkt. 136]
Shaw & Shaw Farms Partnership, LLC	February 22, 2024 [Dkt. 137]
Curtis Jones Farms, Don Jones Farms, Inc., Don Jones Trucking, Inc., and Kinsey Jones	February 22, 2024 [Dkt. 138]
Hines Farms, LLC and Hines Cattle Company, LLC	February 22, 2024 [Dkt. 139]
Bar D Ranch Land & Cattle LLC and N. Terry Dicks	February 22, 2024 [Dkt. 140]
Dennis Buss, Ed Buss, Buss Family Trust, Eddie Bryant, Robert Gray, Ronnie Gray, Gray Brothers, Craig and Amy Sutton, Steve Ryan, Janice E. Lawton, AJ Jacques, AJ Jacques Living Trust, Bradley Gungoll, Leah Gungoll, Gungoll Cattle Co., LLC, Jan Lesh, Gary Lesh, Jordan Lesh, Joel Brookshire, Gene Brookshire Family, LP, Bryan Blackman, Douglas Finley, Colton Long, Steve Scott, Steve T. Scott Fam Inc., Scott Livestock Company, Inc., Arnold Braun, Arnold Braun Trust, Robert Braun, Jim Rininger, Robert Spring, Michael and Miranda Evans, Charles Lockwood, Cole Lockwood, Sherle Lockwood, Nikki Lockwood, Lydal and Janet Van Buskirk, Colby and Susan Van Buskirk, Jimmy Greer, Dustin Johnson and Dora Blackman	March 5, 2024 [Dkt. 142]
Priest Cattle Company, Ltd., Priest Victory Investments LLC, Wiley Roby Russell, Jr., W. Robbie Russell Living Trust, Eddie Stewart, Richard Carraway, Big Seven Capital Partners LLC, Carraway Cattle LLC, Drew Phillips, Barry Phillips, Ridgefield Capital Asset Management, LP, and Robert Ellis	March 5, 2024 [Dkt. 143]
Thorlakson Diamond T Feeders, LC	March 5, 2024 [Dkt. 144]
Kent Ries, Trustee	March 8, 2024 [Dkt. 145]

8. A number of Defendants have failed to answer or otherwise respond to the Amended Complaint, and the deadline for doing so has now expired.

9. Given the specific posture of this case, including the number of parties involved and the answering dates for those Defendants who have elected to file an answer, some of which were just filed in March, the deadlines set forth in the Current Scheduling Order are unworkable. Additionally, as set forth above, the Trustee has concerns regarding the timing of any final judgment in this case given potential concerns over compulsory counter-claims and cross-claims.

10. Federal Rule of Civil Procedure 16, which is incorporated and made applicable in this adversary proceeding by Federal Rule of Bankruptcy Procedure 7016, authorizes the Court to “order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as: (1) expediting disposition of the action; (2) establishing early and continuing control so that the case will not be protracted because of the lack of management; (3) discouraging wasteful pretrial activities; (4) improving the quality of the trial through more thorough preparation; and (5) facilitating settlement.”

11. That same rule allows the Court to modify any scheduling order it has entered in the case “for good cause.”

RELIEF REQUESTED

12. RAF and the Trustee submit that good cause exists to modify the Current Scheduling Order for the reasons set forth above. Indeed, the Current Scheduling Order contemplates a trial of this matter the week of April 15, 2025, with a docket call on April 11, 2025, and those dates are obviously not feasible given that certain Defendants have only filed their answers this month.

13. RAF and the Trustee have met and conferred upon the form of a new Alternative Scheduling Order to propose to the Court and to the remaining Defendants in this adversary proceeding. That proposed new Alternative Scheduling Order is attached hereto as Exhibit “A.”

14. RAF and the Trustee request that the Court consider the views of all parties at the April 11, 2024 docket call and, after considering all such views, the Court enter the new Alternative Scheduling Order attached hereto or such other Alternative Scheduling Order that the Court may deem appropriate.

15. RAF and the Trustee further request that the Court strike the scheduled trial of this matter and all current deadlines pending the entry of a new Alternative Scheduling Order.

WHEREFORE, RAF and the Trustee respectfully requests that the Court hold a status conference in this adversary proceeding, at the docket call on April 11, 2024 or on such other date and at such other time as the Court may determine, that the Court strike all deadlines in the Current Scheduling Order, that the Court consider the views of all parties at the status conference regarding the terms of a new Alternative Scheduling Order, and that the Court grant RAF, the Trustee and all remaining parties such other and further relief as the Court deems just and proper.

DATED this 1st day of April, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 1, 2024, the foregoing document was filed electronically with the Court's CM/ECF system, which sent notice of electronic filing to the following electronic filing users in this case:

- **Rachel E Barr** rbarr@namanhowell.com
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The undersigned also hereby certifies that, on April 1, 2024, a true and correct copy of the foregoing was served, by both first class U.S. mail, postage prepaid, and by email, upon the following:

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/s/ Michael R. Johnson

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